

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

<u>ALICE H. ALLEN, et al.,</u>)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 5:09–CV–00230–cr
)	
DAIRY FARMERS OF AMERICA, INC., and)	
DAIRY MARKETING SERVICES, LLC,)	
)	
<u>Defendants.</u>)	

**DAIRY FARMER SUBCLASSES’ RENEWED MOTION FOR PRELIMINARY
APPROVAL OF PROPOSED SETTLEMENT WITH DEFENDANTS DAIRY
FARMERS OF AMERICA, INC. AND DAIRY MARKETING SERVICES, LLC**

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the DFA/DMS and Non-DFA/DMS Farmer Subclasses (“Subclasses”), through Subclass Counsel, hereby renew their Motion for the Court to grant preliminary approval of the July 1, 2014 settlement agreement (“Settlement Agreement” or “Settlement”) (attached as Exhibit A to Dairy Farmer Subclasses’ supporting memorandum, filed concurrently herewith (“Memorandum”) between the Subclasses and Defendants Dairy Farmers of America, Inc. (“DFA”) and Dairy Marketing Services, LLC (“DMS”) (collectively, “Settling Defendants”).

The Subclasses respectfully request that the Court preliminarily approve the Settlement, approve the proposed Notice of Proposed Settlement for mailing and the proposed Summary Notice of Proposed Settlement for publication, (attached as Exhibit C and Exhibit D to the Memorandum), as well as the proposed plan for dissemination of the notices. Accordingly, the Subclasses move for entry of the proposed Order (attached as Exhibit B to the Memorandum), providing, *inter alia*:

1. The Settlement is preliminarily approved and is sufficiently fair, reasonable, and adequate to authorize dissemination of notice of the Settlement to the Subclasses;

2. the form of the Notice and Summary Notice are approved to notify the Subclasses of the Settlement;

3. the proposed plan for dissemination of the Notice and Summary Notice constitutes the best notice practicable under the circumstances, is due and sufficient notice and complies fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the Constitution of the United States;

4. no additional opt-out period is warranted or required by Rule 23(e)(4) of the Federal Rules of Civil Procedure;

5. the Court will hold a hearing concerning final approval of the Settlement on December 16, 2014, or the earliest date thereafter convenient for the Court (“Fairness Hearing”);

6. any person who timely requested exclusion from the Subclasses may apply to the Court to be reinstated to the Subclasses by setting forth the reasons for seeking reinstatement in a document received by the Claims Administrator at least fourteen (14) days prior to the Fairness Hearing;

7. any Subclass member who objects to the Settlement must do so in writing no less than fourteen (14) days prior to the Fairness Hearing;

8. any Subclass member who wishes to be eligible for a payment as a result of the Settlement shall submit to the Claims Administrator a complete claim form provided with the Notice so it is received no less than fourteen (14) days prior to the Fairness Hearing;

9. Subclass Counsel shall file with the Court, and serve upon counsel of record, the necessary papers to show notice was disseminated in compliance with the Court’s Orders, as

well as any other materials Subclass Counsel wishes the Court to consider, at least seven (7) business days prior to the Fairness Hearing;

10. any Subclass member who seeks to appear and be heard at the Fairness Hearing shall provide notice to the Clerk of the Court and to counsel of record at least fourteen (14) business days prior to the Fairness Hearing;

11. the monetary consideration by Settling Defendants ("Settlement Fund"), as set forth in Section 7 of the Settlement Agreement, is a "Qualified Settlement Fund" pursuant to Treas. Reg. §1.468B-1, and Subclass Counsel and their designees are authorized to use up to \$100,000 of the Settlement Fund to give notice of the Settlement to Subclass members and for administration costs, up to \$10,000 of the Settlement Fund for escrow agent costs, and such amount of the Settlement Fund as is required to pay taxes on income earned on the Settlement Fund, with prior notice to Settling Defendants;

12. Rust Consulting, Inc. is appointed as Claims Administrator for purposes of notice and administration of the Settlement, and JPMorgan Chase Bank, National Association, shall serve as the escrow agent in connection with the Settlement Fund as set forth in the Settlement Agreement;

13. all proceedings against Settling Defendants, except those proceedings provided for or required by the Settlement Agreement, are stayed; and

14. Plaintiffs and members of the Subclasses are preliminarily enjoined from the initiation, commencement or prosecution of any Released Claim against any of the Settling Defendants.

Dated: October 3, 2014

Respectfully submitted,

/s/ Robert G. Abrams

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CERTIFICATE OF SERVICE

I, Danyll W. Foix, certify that a true and correct copy of the foregoing ***Dairy Farmer Subclasses' Renewed Motion for Preliminary Approval of Proposed Settlement With Defendants Dairy Farmers of America, Inc. and Dairy Marketing Services, LLC.*** was served this 3rd day of October, 2014, on all counsel of record by ECF.

/s/ Danyll W. Foix
Danyll W. Foix